

Mark J. Bennett, 2672
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Department of Attorney
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2007 AUG -6 PM 1:53

HAWAII LABOR
RELATIONS BOARD

Attorneys for Director of Labor
and Industrial Relations

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of:)	CASE NO. OSH 2007-9
DIRECTOR, DEPARTMENT OF LABOR)	(OSHCO ID X8851)
AND INDUSTRIAL RELATIONS)	(310389507)
)	
Complainant,)	STIPULATION AND SETTLEMENT
)	AGREEMENT
vs.)	
)	
A-1 MASTER ROOFING, INC.)	
)	
Respondent.)	
)	
)	

STIPULATION AND SETTLEMENT AGREEMENT

WHEREAS, the DIRECTOR OF LABOR AND INDUSTRIAL RELATIONS, by his Hawaii Occupational Safety and Health Division, (Director), inspected the work site of A-1 MASTER ROOFING, INC., (Respondent), located at Lot 127, Pua'ena Street, Kamuela, Hawaii 96743, (Premises) on February 5, 2007; and

WHEREAS, as a consequence of said inspection, the Director, issued a Citation and Notification of Penalty on February 28, 2007, ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$9,000.00. See Exhibit A.

WHEREAS, Respondent has abated each violation listed in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22 on March 5, 2007;

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").

2. At all relevant times, Respondent maintained a workplace at Lot 127, Pua'ena Street, Kamuela, Hawaii 96743.

3 At all relevant times, Respondent was an employer, as defined in HRS §396-3, and employed employees, as defined in HRS §396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.

4. The Citations and their respective characterizations are affirmed. Respondent agrees to pay the total proposed penalty of \$9,000.00 in monthly installments of \$3,000.00 each of which is due and payable on the first day of each month, beginning with the month of August 2007. Respondent further agrees that if it fails to comply with the payment plan,

the Director may give notice and may declare the entire original penalty in the amount of \$9,000.00 immediately due and owing, provided that all payments made by Respondent shall be credited to Respondent and retained by the Director.

a. If Respondent fails to pay all penalties and the Director institute legal action to collect on the outstanding amount due, Respondent agrees to pay all fees and costs, including reasonable attorney's fees, incurred to collect on the unpaid penalties. Any forbearance by the Director in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

5. Except for the stipulated amendment described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

6. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

7. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

8. By entering into this Agreement, Respondent does not admit that it violated the cited standards of Citation 1 Item 1 and Citation 2, Item 1 for any litigation or purpose other than proceedings under the Hawaii Occupational Safety and Health Law for similar and subsequent violations of the same cited standards as contained in Exhibit A.

9. Unless otherwise provided by this Agreement, nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.

DATED: Honolulu, Hawaii, July 27, 2007.

APPROVED AS TO FORM:

A-1 MASTER ROOFING, INC.

Attorney for Respondent

By: _____
Its _____

John S. Linn
President

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND
INDUSTRIAL RELATIONS

Leo B. Young

Leo B. Young
Deputy Attorney General

Nelson B. Befitel

NELSON B. BEFITEL
Director of Labor and
Industrial Relations,
State of Hawaii

APPROVED AND SO ORDERED BY
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 258

DATED: August 6, 2007

[Signature]

~~BRIAN K. NAKAMURA, Chair~~
JAMES B. NICHOLSON, Chairman

Emory J. Springer

EMORY J. SPRINGER, Member

Sarah R. Hirakami

~~SANDRA R. HIRAKAMI, Member~~
SARAH R. HIRAKAMI, Member

State of Hawaii
Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813
Phone: (808) 586-9110 FAX: (808) 586-9104



Certified Number: 7003 1680 0000 9997 4018

Citation and Notification of Penalty

To:
A-1 Master Roofing Inc
and its successors
905 Kalaniana'ole Hwy
Kailua, HI 96734-4646

Inspection Number: 310389507 (Charles Clark)
Inspection Date(s): 02/05/2007 - 02/05/2007
Issuance Date: 02/28/2007
OSHSO ID: X8851
Optional Report No.: 02107
Inspection Type: Referral
Scope of Inspection: Partial Inspection

Inspection Site:
Lot 127 Pua'ena St
Kamuela, HI 96743

The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

Posting - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

Informal Conference - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 4, Notice to Employees next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

Employers' Right to Contest - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

Penalty Payment - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

Notification of Corrective Action - For each violation which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For Willful and Repeat violations, documents (example: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as Serious and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

All abatement verification documents must contain the following information: 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-55-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

Employer Discrimination Unlawful - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

Employer Rights and Responsibilities - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

Employees' Right to Contest - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

Inspection Activity Data - you should be aware that OSHA publishes information on its inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at WWW.OSHA.GOV. If you have any dispute with the accuracy of the information displayed, please contact this office.



NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 02/28/2007. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, Honolulu, HI 96813 on _____ at _____. Employees and/or representatives of employees have a right to attend an informal conference.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310389507
Inspection Dates: 02/05/2007 - 02/05/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 02/28/2007

Citation and Notification of Penalty

Company Name: A-1 Master Roofing Inc
Inspection Site: Lot 127 Pua'ena St, Kamuela, HI 96743

Citation 1 Item 1 Type of Violation: Repeat

29 CFR 1926.501(b)(13) [Refer to chapter 12-121.2, HAR] was violated because:

Two employees working 10 to 13 feet above the lower level on a roof were not utilizing any form of fall protection. The lack of fall protection exposed the employees to serious injuries in the event of a fall to the lower level.

29 CFR 1926.501(b)(13) states "Residential construction. Each employee engaged in residential construction activities 6 feet (1.8 m) or more above lower levels shall be protected by guardrail systems, safety net system, or personal fall arrest system unless another provision in paragraph (b) of this section provides for an alternative fall protection measure. Exception: When the employer can demonstrate that it is infeasible or creates a greater hazard to use these systems, the employer shall develop and implement a fall protection plan which meets the requirements of paragraph (k) of §1926.502.

There is a presumption that it is feasible and will not create a greater hazard to implement at least one of the above-listed fall protection systems. Accordingly, the employer has the burden of establishing that it is appropriate to implement a fall protection plan which complies with §1926.502(k) for a particular workplace situation, in lieu of implementing any of those systems."

The A-1 Master Roofing Company Inc was previously cited for previous violations of this Occupational Safety and Health Standard, or its equivalent standard, which are contained in HIOSH inspection number 308487933, Citation 01, item 001, issued on July 18, 2005, which became a final order on August 7, 2005 and/or, HIOSH inspection 308489137, Citation 01, item 001, issued on September 27, 2005, which became a final order on October 18, 2005 and/or, HIOSH inspection 309457042, Citation 01, item 001, issued on March 31, 2006, which became a final order on April 20, 2006.

Location: Lot 127

Abatement Documentation Required

Date By Which Violation Must be Abated: 03/05/2007
Penalty: \$6,000.00

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

STATE OF HAWAII

Department of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division

Inspection Number: 310389507
Inspection Dates: 02/05/2007 - 02/05/2007



830 Punchbowl Street, Room 425
Honolulu, HI 96813

Issuance Date: 02/28/2007

Citation and Notification of Penalty

Company Name: A-1 Master Roofing Inc
Inspection Site: Lot 127 Pua'ena St, Kamuela, HI 96743

Citation 2 Item 1 Type of Violation: Serious

29 CFR 1926.503(a)(2) [Refer to chapter 12-121.2, HAR] was violated because:

An employee without any type of fall protection working on a roof with a 10 to 13 foot fall to the lower level was not provided with the required fall protection training. The lack of fall protection training exposed the employee to serious injuries in the event of a fall to the lower level.

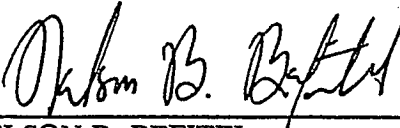
29 CFR 1926.503(a)(2) states "The employer shall assure that each employee has been trained, as necessary, by a competent person qualified in the following areas:

- (i) The nature of fall hazards in the work area;
- (ii) The correct procedures for erecting, maintaining, disassembling, and inspecting the fall protection systems to be used;
- (iii) The use and operation of guardrail systems, personal fall arrest systems, safety net systems, warning line systems, safety monitoring systems, controlled access zones, and other protection to be used;
- (iv) The role of each employee in the safety monitoring system when this system is used;
- (v) The limitations on the use of mechanical equipment during the performance of roofing work on low-sloped roofs;
- (vi) The correct procedures for the handling and storage of equipment and materials and the erection of overhead protection; and
- (vii) The role of employees in fall protection plans;
- (viii) The standards contained in this subpart."

Location: Site

Abatement Documentation Required

Date By Which Violation Must be Abated: 03/8/2007
Penalty: \$3,000.00


NELSON B. BEFITEL
DIRECTOR

See pages 1 through 3 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

3/27/07

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece or on the front if space permits.</p>		<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>Adrian K. Vallin</i> </p>	
<p>1. Article Addressed to: 310389507</p> <p>Mr. Steven Sarkissian, Manager A-1 Master Roofing, Inc. 905 Kalaniana'ole Highway Kailua, Hawaii 96734-4646</p>		<p>B. Received by (Printed Name): <i>Adrian K. Vallin</i></p> <p>C. Date of Delivery: <i>3/27/07</i></p>	
<p>2. Article Number (Transfer from Service Label):</p>		<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</p>	
<p>PS Form 3811, August 2001</p>		<p>3. Service Type: <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D. 4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	
<p>7003 1680 0000 9997 4018</p>		<p>Domestic Return Receipt</p>	

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OFFICIAL USE

Safety	Postage	\$.87
	Certified Fee	2.40
	Return Receipt Fee (Endorsement Required)	1.85
	Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees		\$ 5.12

310389507

Postmark
HONOLULU HI MAI
2007 FEB 28
USPS

Sent To: A-1 Master Roofing, Inc.

Street, Apt. No., or PO Box No.: 905 Kalaniana'ole Highway

City, State, ZIP+4: Kailua, Hawaii 96734-4646

PS Form 3800, June 2002 See Reverse for Instructions

State of Hawaii

Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
Honolulu, HI 96813

SUMMARY OF PENALTIES

Company Name: A-1 Master Roofing Inc
Inspection Site: Lot 127 Pua'ena St
Kamuela, HI 96743
Issuance Date: 02/28/2007

Summary of Penalties for Inspection Number 310389507

Citation 01, Repeat	=	\$6,000.00
Citation 02, Serious		\$3,000.00

TOTAL PENALTIES	=	\$9,000.00
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Make check or money order payable to the "Director of Budget and Finance." Please indicate the inspection number and dba, if company name is different, on the remittance. A fee of \$15.00 will be charged for any returned checks.

If receipt is desired, please indicate with payment; otherwise, your cancelled check will be your receipt.

ABATEMENT CERTIFICATION

State of Hawaii
Department of Labor and Industrial Relations
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION
830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HI 96813

A-1 Master Roofing Inc
950 Kalanianaʻole Hwy
Kailua, HI 96734-4646

The hazard referenced in Inspection Number 310389507 for the violation identified as Citation 01 and item 001 was corrected on 2-7-07.

How corrected

made sure used harnesses previously issued.

The hazard referenced in Inspection Number 310389507 for the violation identified as Citation 02 and item 001 was corrected on 3/5/07.

How corrected

Had training class

I attest that the Information contained in this document is accurate and that the affected employees and their representatives have been informed of the abatement activities described in this certification.


Signature

John S Serkis
Type or Printed Name